

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF COLLEGE STATION
AND TEXAS A&M UNIVERSITY**

This Agreement ("Agreement") is effective as of the 1st day of July, 2001, by and between **TEXAS A&M UNIVERSITY**, (hereafter referred to as "**TAMU**") a member of The Texas A&M University System, and the **CITY OF COLLEGE STATION**, (hereafter referred to as "**COLLEGE STATION**").

WHEREAS, Texas Government Code, Chapter 791, also known as the Interlocal Cooperation Act, authorizes local governments to contract with each other to perform functions or services each party to the contract is authorized to perform individually; and

WHEREAS, **COLLEGE STATION** and **TAMU** each desire to enter into an Interlocal Agreement to provide funding for the construction and maintenance of a pedestrian sidewalk around the main campus of Texas A&M University extending from Texas Avenue along University Drive to Wellborn Road, along Wellborn Road to George Bush Drive, and along George Bush Drive to Texas Avenue (hereafter referred to as the "Sidewalk Project"); and

WHEREAS, **COLLEGE STATION** and **TAMU** agree the situs of the contemplated Sidewalk Project is on **TAMU's** original main campus land grant and under the exclusive control of the Board of Regents, The Texas A&M University System ("**TAMUS**"), subject only to the actions of the legislature of the State of Texas; and

WHEREAS, **COLLEGE STATION** and **TAMU** each represent it is authorized to enter into this Agreement;

NOW, THEREFORE, in consideration of the recitals and mutual covenants made by **TAMU** and **COLLEGE STATION** to be respectively kept and performed, the parties agree as follows:

SECTION I. PURPOSE OF AGREEMENT

1.1. The purpose of this Agreement is to establish the responsibilities of **TAMU** and **COLLEGE STATION** regarding the funding, construction and maintenance of the Sidewalk Project around the perimeter of the Texas A&M University main campus.

SECTION II. TERM

2.1. This Agreement remains in effect until construction of the Sidewalk Project is completed, but in no event for more than two (2) years after the effective date of this Agreement. This Agreement immediately terminates in the event funding referenced in Section 2.2 is not obtained.

2.2. The parties specifically agree this Agreement is subject to final approval of the contemplated Advance Funding Agreement between **COLLEGE STATION** and the **TEXAS DEPARTMENT OF TRANSPORTATION** (hereafter referred to as "TxDOT") described further in paragraph 3.1 of this Agreement. In the event such final approval is not obtained within a reasonable period of time, not to exceed one (1) year from the effective date of this Agreement, all moneys previously advanced pursuant to this Agreement will be refunded within thirty (30) calendar days and this Agreement will be automatically terminated.

2.3. This Agreement may be terminated by either **TAMU** or **COLLEGE STATION**, without cause, prior to the solicitation of construction bids contemplated by this Agreement, provided thirty (30) calendar days written notice is provided to the other party. In the event of such termination, any payments made will be refunded to the parties within thirty (30) calendar days.

SECTION III. PROJECT DESCRIPTION/DESIGN

3.1. The parties agree the precise layout and construction design of the Sidewalk Project will be subsequently determined based on the engineering designs to be provided by **TxDOT** as contemplated by this Agreement. The Vice President for Administration of Texas A&M University must approve such design in writing prior to the start of any preparation for construction or construction. Upon approval by **TAMU**, **TxDOT** will solicit bids for and manage construction of the Sidewalk Project.

3.2. The parties further agree the general layout of the Sidewalk Project will be in accordance with the description set forth and illustrated in "Exhibit "A", attached and incorporated into this Agreement.

SECTION IV. PROJECT RESPONSIBILITIES

4.1. COLLEGE STATION.

4.1.1. **COLLEGE STATION** shall in good faith attempt to enter into an "Advance Funding Agreement" with **TxDOT** pursuant to which: (a) **TxDOT** will design/engineer the Sidewalk Project; (b) **TxDOT** will pay one-third of the construction costs associated with the Sidewalk Project.

4.1.2 **COLLEGE STATION** will coordinate with **TxDOT** and **TAMU** regarding the Sidewalk Project activities performed by **TxDOT** as outlined in Section 3.1.

4.2 **TAMU.**

4.2.1 **TAMU** understands and agrees the Sidewalk Project will be constructed solely on **TAMU** property along the route generally described and illustrated in Exhibit "A".

4.2.2 **TAMU** shall identify and mark all lawn sprinklers and associated utility lines on **TAMU** property along the proposed location of the Sidewalk Project. Upon determination by **TxDOT** and/or **COLLEGE STATION** that any such fixtures will interfere with the Sidewalk Project, **COLLEGE STATION** will obtain written approval from the **TAMU** Vice President for Administration identified in Section VIII of this Agreement, prior to removal and/or relocation of such fixtures. **TAMU** shall pay cost associated with eliminating such interference. **TAMU** further agrees to provide such assistance as may be necessary during construction.

4.2.3 **TAMU** will identify and mark all utility lines (including but not limited to gas, water, sewage and electrical) along the proposed location of the Sidewalk Project prior to commencement of construction.

SECTION V. PROJECT COSTS

5.1. The total cost of the Sidewalk Project must not exceed the estimated amount of Six Hundred Thousand and No/100 Dollars (\$600,000.00), but actual bid amounts may be lower.

5.2. **COLLEGE STATION** agrees to pay one-third of the total costs of the Sidewalk Project based on the cost of construction listed in the bid award, but in no event more than Two-Hundred Thousand and No/100 Dollars (\$200,000.00).

5.3. **TAMU** agrees to pay one-third of the total costs of the Sidewalk Project based on the cost of construction listed in the bid award, but in no event more than Two-Hundred Thousand and No/100 Dollars (\$200,000.00).

5.4. All payments will be made from currently available revenues in a lump sum, within thirty (30) days upon the completion of: (a) the execution of the Advance Funding Agreement and (b) the award of construction bids, into a fund to be held, administered and disbursed by College Station.

SECTION VI. SIDEWALK MAINTENANCE

6.1. **TAMU** and **COLLEGE STATION** expressly agree **TAMU**, upon completion of the Sidewalk Project, owns and will maintain the Sidewalk.

SECTION VII. MODIFICATION OF AGREEMENT

7.1. The terms and conditions of the Agreement may be modified at any time by the mutual consent of both parties. However, no amendment or modification to this Agreement is effective unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

SECTION VIII. WRITTEN NOTICE

8.1. Unless otherwise specified, written notice will be deemed to have been duly served if delivered in person to the individuals listed below or if it is delivered or sent certified mail to the business address below. Each party will have the right to change its business address by at least thirty (30) calendar days written notice to the other parties in writing of such changes.

TAMUS: Charles A. Sippial, Sr.
Vice President for Administration
218 Administration Building
College Station, TX 77843-1247

With a Copy to: Michael B. Huddleston
Director, Contract Administration
213 Coke Building
College Station, TX 77843-1260

COLLEGE STATION: Mark Smith
Public Works Director
P.O. Box 9960
1101 Texas Avenue
College Station, TX 77842

SECTION IX. STATE AGENCY

9.1. **COLLEGE STATION** expressly acknowledges **TAMU** is an agency of the State of Texas and **TAMU** acknowledges **COLLEGE STATION** is a Texas municipality. Nothing in this Agreement will be construed as a waiver or relinquishment by **TAMU** or **COLLEGE STATION** of its right to claim such exemptions, privileges and immunities as may be provided by law.

SECTION X. WAIVER

10.1. Failure of any party, at any time, to enforce a provision of this Agreement, in no way constitutes a waiver of that provision, nor in anyway affects the validity of this Agreement, any part of this Agreement, or the right of the party thereafter to enforce each and every provision of this Agreement. No term of this Agreement will be deemed waived or breach excused unless such waiver is in writing and signed by the party claiming to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

SECTION XI. INVALIDITY

11.1. If any portion of this Agreement is held invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired.

The parties will use their best efforts to replace the respective provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

SECTION XII. ENTIRE AGREEMENT

12.1. It is understood this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of **COLLEGE STATION** or **TAMU**, either before or after the execution of this Agreement, affects or modifies any terms or obligations of this Agreement.

SECTION XIII. CHOICE OF LAW

13.1. This Agreement is governed by the laws of the State of Texas.

SECTION XIV. PLACE OF PERFORMANCE

14.1. Performance of this Agreement is in Brazos County, Texas.

SECTION XV. AUTHORITY

15.1. Each party has full power and authority to enter into and perform under this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement represent that they have authorization to sign on behalf of their respective entities.

SECTION XVI. AGREEMENT READ

16.1. The parties acknowledge that it has read, understands and intends to be bound by the terms and conditions of this Agreement.

SECTION XVII. MULTIPLE ORIGINALS

17.1. It is understood and agreed this Agreement may be executed in a number of identical counterparts with each deemed an original for all purposes.

IN WITNESS OF THIS AGREEMENT, COLLEGE STATION and TAMU,
through its duly appointed agents, have executed this Agreement in duplicate originals.

EXECUTED this the 10th day of July, 2001 by
TAMU.

"TAMU"
TEXAS A&M UNIVERSITY

By: William B. Krumm
WILLIAM B. KRUMM
Vice President for Finance

RECOMMEND APPROVAL:

Charles A. Sippial, Sr.
CHARLES A. SIPPIAL, SR.
Vice President for Administration

Richard L. Floyd
RICHARD L. FLOYD
Associate Vice President for Finance

APPROVED AS TO FORM:

Eddie D. Gose, J.D.
EDDIE D. GOSE, J.D.
Associate General Counsel
Office of General Counsel
The Texas A&M University System

EXECUTED this the _____ day of _____, 2001
by COLLEGE STATION.

"COLLEGE STATION"
CITY OF COLLEGE STATION

By: _____
LYNN McILHANEY
Mayor

ATTEST:

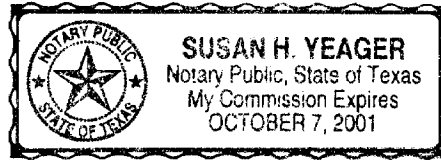
CONNIE HOOKS
City Secretary

APPROVED AS TO FORM:

 7-13-01
College Station City Attorney

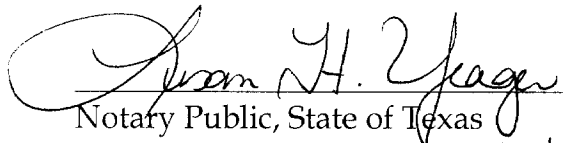
ACKNOWLEDGEMENTS

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §



BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **WILLIAM B. KRUMM**, Vice President for Finance, Texas A&M University, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed it for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10th day of July, A. D. 2001.


Notary Public, State of Texas
My Commission Expires: 10/7/01

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **LYNN McILHANEY**, Mayor, City of College Station, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed it for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, A. D. 2001.

Notary Public, State of Texas
My Commission Expires: _____

Exhibit A

General Project Description

The Project shall go around the main campus of Texas A&M University extending from Texas Avenue along University Drive to Wellborn Road, along Wellborn Road to George Bush Drive, and along George Bush Drive to Texas Avenue.

Said route is illustrated as depicted below.

